

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

File No.

City of Long Lake,

CASE TYPE:

Plaintiff,

v.

City of Orono,

**MEMORANDUM OF LAW IN
SUPPORT OF THE CITY OF LONG
LAKE'S MOTION FOR
PRELIMINARY INJUNCTION**

Defendant.

INTRODUCTION

Plaintiff City of Long Lake ("Long Lake") submits this Memorandum of Law in Support of its Motion for a Preliminary Injunction. Plaintiff asks the Court for an injunction prohibiting Defendant City of Orono ("Orono") from pursuing plans to take control of the Fire Stations and obstruct Long Lake's ability to meet its contractual obligations. Orono's actions breach the Agreement and Contract for Fire Protection ("Contract for Fire Protection"), entered into by the parties that secures Long Lake's right to furnish all fire protection and emergency services, and manage the ongoing operation and maintenance of the Fire Stations, through December 31, 2025.

The Contract for Fire Protection entered into between Long Lake, Orono, and Medina (collectively, the "Contracting Cities") expressly provides that Long Lake will, *inter alia*, manage the operations and maintenance of the Fire Stations, furnish firefighting services, rescue/medical rescue services, and related fire protection services to the Contracting Cities, and furnish sufficient staff to each fire and emergency call in order to safely and effectively provide all necessary services. It is undisputed that Long Lake has fulfilled, and continues every day to fulfill its obligations under the Contract for Fire Protection; yet, Orono seeks to openly breach

the contract by taking control of the Fire Stations, competing with Long Lake for expensive and limited fire protection equipment, and recruiting Long Lake firefighters, all without legal justification. Taken together, these actions are clear attempts to systematically dismantle the Long Lake Fire Department (“LLFD”) and render it useless, so other Contracting Cities have no choice but to pay for fire protection services from the new Orono Fire Department.

Orono has made no attempt to deny that Long Lake is obligated by contract to furnish the above-mentioned services and manage the operation and maintenance of the Fire Stations until the contract expires on December 31, 2025. Nevertheless, Orono has threatened that if Long Lake does not agree to transfer the LLFD to Orono, it would “build [its] own Fire Department from scratch.” It has become clear that building a fire department “from scratch” actually means unlawfully assuming physical control of Fire Station 2, and recruiting and hiring away Long Lake’s highly trained and experienced firefighters, which has the effect of stripping Long Lake’s ability to perform fire protection services. In turn, Orono plans to solicit fire protection contracts with neighboring cities such as Medina, Minnetonka Beach, and even *Long Lake*, all before the Contract for Fire Protection expires.

As such, this Court should immediately enter a preliminary injunction to prevent irreparable harm to Long Lake by enjoining Orono from breaching the parties’ Contract for Fire Protection, interfering with the Minnetonka Beach Fire Protection Contract, and interfering with Long Lake’s employment relationship with its firefighters, all of which when taken together would effectively gut the LLFD and its ability to perform life saving emergency services.

FACTUAL BACKGROUND

The City of Long Lake (“Long Lake”) is a community of approximately 1,800 people located in the western suburbs of Minneapolis, in Hennepin County, Minnesota. Declaration of Mayor Charlie Miner (“Miner Decl.”), ¶ 2. Long Lake has operated a fire department since 1915

that has successfully served Long Lake residents and other communities for over 100 years. Miner Decl. ¶ 3. The City of Orono (“Orono”) borders Long Lake and has benefited from Long Lake’s fire protection services for decades. Miner Decl. ¶ 4.

I. THE HISTORY OF THE LONG LAKE FIRE DEPARTMENT

For years, the Long Lake Fire Department was located at 1944 Park Avenue, Long Lake, Minnesota. Miner Decl. ¶ 5. The land and building where the original Long Lake Fire Station was located was owned by Long Lake. *Id.* But in 2001, the Minnesota Department of Transportation condemned the land upon which the original Long Lake Fire Station was situated for purposes of building a new highway. Miner Decl. ¶ 6. At that time, Long Lake was providing fire protection services to Orono and Medina. *Id.* The Minnesota Department of Transportation agreed to pay Long Lake, Orono, and Medina approximately \$3,498,200.00 for the costs of a new fire station, including construction costs and other expenses related to the construction of a new fire station, such as the cost of land, site improvements, legal fees, consultant fees, etc. Miner Decl. ¶ 7.

Replacement land was located for the Long Lake Fire Station at 340 Willow Drive, Orono, Minnesota (“Fire Station 1”). Miner Decl. ¶ 8. However, utilities to the new fire station such as the water and sewer systems continue to be supplied by Long Lake. *Id.* In August 2001, Long Lake and Orono entered into a Contract for Joint Ownership in connection with Fire Station 1. Miner Decl. ¶ 9. Pursuant to the Contract for Joint Ownership, Long Lake agreed that it would not seek annexation of the land into the City of Long Lake, but that “Long Lake shall have the overall responsibility to oversee the operation and maintenance of the land and building upon which the Long Lake Fire Station is to be relocated.” Miner Decl. ¶ 9, Ex. A, §§ 3, 6. Initially, ownership interests were sixty percent to Orono, and forty percent to Long Lake. *Id.* at § 3. However, the ownership interests changed on a yearly basis over the course of twenty years,

and as of December 31, 2020, Long Lake and Orono each owned fifty percent of Fire Station 1.

Id. Orono’s cancellation of the Contract for Joint Ownership calls into question Orono’s right to maintain any ownership over Fire Station 1.

II. LONG LAKE PROVIDES FIRE PROTECTION AND EMERGENCY SERVICES TO SURROUNDING CITIES PURSUANT TO ITS CONTRACTS

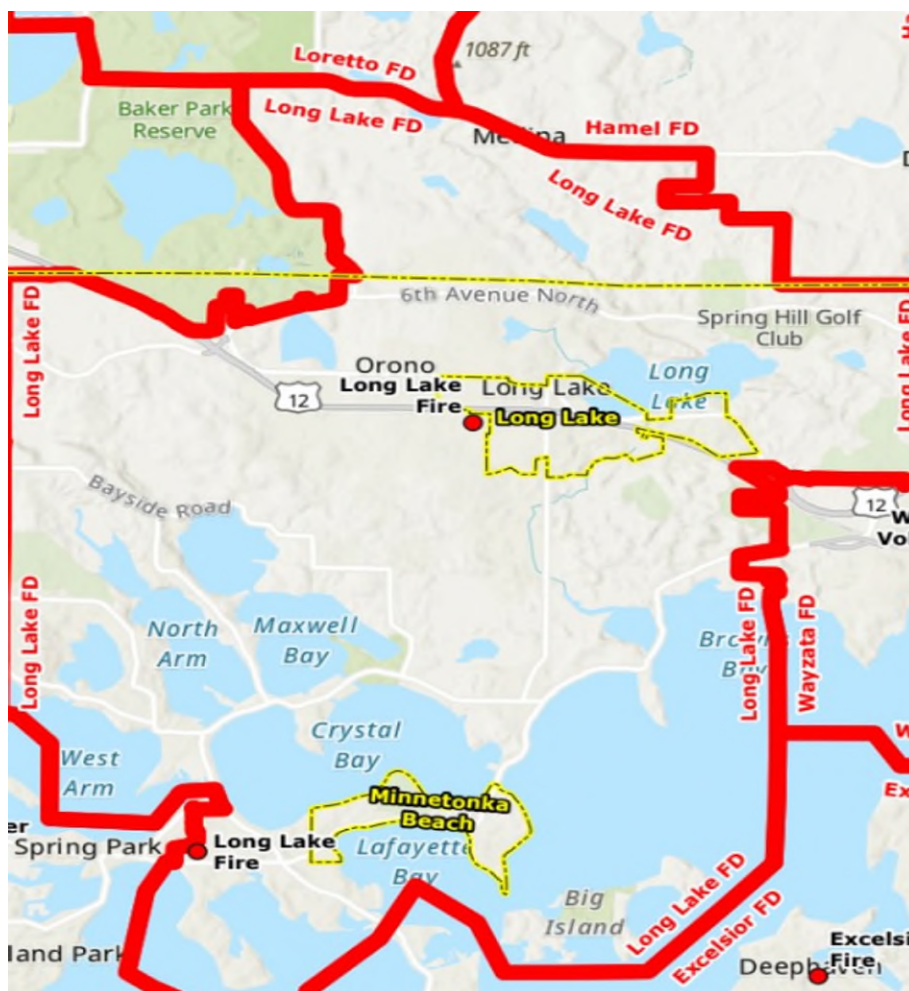
For at least two decades, LLFD has provided fire protection services to the cities of Orono and Medina pursuant to the Contract for Fire Protection, dated October 15, 2002. Miner Decl. ¶ 10, Ex. B. The Contract for Fire Protection provides that Long Lake shall furnish “all fire fighting services, rescue/medical rescue services, and related fire protection services to the Contracting Cities.” Miner Decl. ¶ 10, Ex. B, § 2. The parties also agreed that “Long Lake will furnish sufficient staff to each call to safely, legally and effectively operate all necessary vehicles and equipment and provide all necessary services.” *Id.* at § 3. The parties expressly agreed that, “[t]he City of Long Lake shall be responsible for managing the operation of the Long Lake Fire Department, and for managing the on-going operation and maintenance of the Long Lake fire station.” *Id.* at § 8.

In connection with funding, the Contract for Fire Protection provides, “[t]he Long Lake Fire Department’s annual operating expenditures will be controlled through an Annual Fire Services Operating Budget.” *Id.* at § 9. Additionally, “[t]he City of Long Lake and the Long Lake Fire Department shall prepare a 15-year major equipment replacement plan, and a 15-year plan for major maintenance, repair, or rehabilitation items related to the fire station. These 15-year plans will be the basis for the preparation of an annual capital budget . . . The final approval of capital expenditures occurs as part of the Annual Fire Services Capital Budget Approval process.” *Id.* at § 11.

The term of the Contract for Fire Protection initially covered the period of January 1, 2002 through December 31, 2020. *Id.* at § 10. The term of the Contract for Fire Protection was extended for a period of five years, through December 31, 2025. Miner Decl. ¶ 11.

The LLFD currently maintains two fire stations in the fire service area. Miner Decl. ¶ 12. The second fire station is located at 3770 Shoreline Drive, Orono, Minnesota (“Fire Station 2”). Orono owns 100 percent of Fire Station 2. *Id.* Nevertheless, on December 12, 2011, Orono and Long Lake entered into an Addendum to the Contract for Fire Protection and agreed that Long Lake will “oversee all activities and operations at Fire Station No. 2 under the same terms and conditions as previously agreed to in the existing [contract],” that “Long Lake will be responsible for operating and maintaining the fire station, and the costs incurred by Long Lake for operating and maintaining the fire station building along with the costs associated with the operation of the services provided from the fire station will be reimbursed to Long Lake as part of an amended [contract] using the same cost-sharing formula as is currently in place,” and notably, “[t]he Cities agree that Paragraph #8 of the Existing [contract] includes responsibility for managing the operation of Fire Station No. 2.” Miner Decl. ¶ 13, Ex. C, §§ 1, 2, and 5. Fire Station 1 and Fire Station 2 are collectively referred to herein as the “Fire Stations.”

The LLFD consists of approximately forty-two firefighters between the Fire Stations. Miner Decl. ¶ 14. The LLFD currently services the areas depicted below pursuant to the Contract for Fire Protection with Orono and Medina, and the Fire Service Contract with Minnetonka Beach.



The intention of this contractual structure of sharing fire protection services between cities is to bring communities together under one fire service provider to provide high-quality fire protection and emergency services, while reducing redundancy in service and costs associated with creating separate fire departments for each city. Miner Decl. ¶ 16.

This structure, with Long Lake serving as a contractual provider of fire services, has served the cities of Long Lake, Orono, and Medina well for the last twenty years, and with Minnetonka Beach, the last five years. Despite this, in April 2021, Orono served Long Lake with a Notice of Termination to terminate the Contract for Fire Protection, stating that the contract shall terminate on its expiration date of December 31, 2025. Miner Decl. ¶ 17, Ex. D. Orono also served a Notice of Termination of the Contract for Joint Ownership in connection

with Fire Station 1, stating that the contract shall terminate on its expiration date of December 31, 2025. Miner Decl. ¶ 18, Ex. E. Long Lake will maintain its responsibility to oversee the operation and maintenance of Fire Station 1 consistent with its practices in connection with the initial Long Lake Fire Department prior to its relocation to Orono.

III. ORONO BEGINS TO SYSTEMATICALLY OBSTRUCT LONG LAKE'S ABILITY TO PERFORM PURSUANT TO ITS CONTRACTS

Since receiving these notices of termination, Long Lake and Orono have engaged in discussions about the future of fire protection services between the cities. Miner Decl. ¶ 19. Orono demanded a full transfer of the LLFD from the control Long Lake to the sole control of Orono. *Id.* Orono then threatened that if Long Lake did not agree on the full transfer to the LLFD, Orono will “build [its] own Fire Department from scratch.” *Id.* Long Lake refused to agree to transfer the ownership of the LLFD to Orono. *Id.*

In September of 2022, Orono City Council passed a resolution to establish the Orono Fire Department. Miner Decl. ¶ 20. Since then, Orono has been working swiftly and systematically in an attempt to dismantle the LLFD and assume control of at least Fire Station 2, in violation of its contractual obligations. First, in October 2022, using the knowledge and resources from its involvement with the LLFD, Orono purchased a ladder truck, which is the same vehicle that Long Lake officials were exploring the potential to buy with the approval of each Contracting City. Miner Decl. ¶ 22. The Contract for Fire Protection, which remains in effect until December 31, 2025, provides that the LLFD is to furnish all firefighting services, rescue/medical services, and related fire protection services for the Total Fire Services Area. Orono has no need for a ladder truck, as it is not currently providing firefighting services. *Id.* Instead, Orono is blatantly obstructing the LLFD's ability to perform its contractual obligations by directly competing with

the LLFD for expensive fire protection equipment despite not performing *any* fire protection services at this time.

In maintaining this pattern of obstruction, in December 2022, Orono hired James Van Eyll, who was acting as the LLFD Chief prior to being hired by Orono as the Fire Chief of the Orono Fire Department. Miner Decl. ¶ 23. Then, in January and February 2023, representatives from Orono met with legislators to rally support for legislation that would give Orono control of the LLFD pension funds in 2024. Miner Decl. ¶ 24. It has become clear that Orono seeks control of pension funds because Orono intends to offer employment to LLFD firefighters. *Id.* In fact, Orono Fire Department Chief James Van Eyll has already approached LLFD firefighters and asked whether they were “with him,” indicating his plan to recruit Long Lake firefighters to join the Orono Fire Department. Miner Decl. ¶ 25. Further, Orono Council Member Matt Johnson publicly stated in an Orono City Council meeting that Orono is “prepared to take *all* Long Lake firefighters” to help with the territory related to Fire Station 2. Miner Decl. ¶ 26. Any recruitment of LLFD firefighters will directly hinder Long Lake’s ability to perform its contractual obligations, such as furnish sufficient staff to each fire call to operate all vehicles and provide all necessary services. Miner Decl. ¶ 27.

Orono has also made it clear that it will refuse to approve future Capital Budgets or future shared equipment purchases under the current Contract for Fire Protection. Miner Decl. ¶ 28. The direct effect of Orono’s refusal to approve capital expenditures is that important firefighting equipment may not be fixed or replaced because there is no approved budget. *Id.* This is particularly troublesome as one of the engines broke down during a training session. Miner Decl. ¶ 29. It would be disastrous for any important firefighting equipment to break down on an emergency call. *Id.*

On April 25, 2023, counsel for Long Lake sent a letter to Orono Mayor Dennis Walsh and Orono City Council providing notice that above-described actions by Orono constitute breach of the Contract for Fire Protection. Declaration of Christopher Yetka (“Yetka Decl.”) ¶ 2, Ex. A. The letter states that if Orono continues any future actions that will adversely affect Long Lake’s ability to perform under the Contract for Fire Protection, Long Lake will institute legal action to compel Orono’s performance pursuant to the contract. *Id.* On May 8, 2023, Long Lake received a letter from the Orono City Attorney confirming receipt of the April 25, 2023 letter, and stating that the letter would be discussed with Orono as part of the May 22, 2023 city council meeting, and he would respond if appropriate. Yetka Decl. ¶ 3, Ex. B.

Orono then approved a Needs Assessment that expressly describes Orono’s plan to take over the LLFD and shut down Long Lake’s ability to provide fire protection services to its service area. Miner Decl. ¶ 30. Orono’s clear intention to take control of Fire Station 2 will directly impact Long Lake’s ability to render the fire protection and emergency services it is obligated to provide pursuant to both the Contract for Fire Protection between Long Lake, Orono, and Medina, as well as the Fire Protection Contract between Long Lake and Minnetonka Beach. Miner Decl. ¶ 32. In fact, Long Lake and Minnetonka Beach entered into the Fire Protection Contract in part because of the location of Fire Station 2. Miner Decl. ¶ 33. Any attempts by Orono to restrict Long Lake’s access or use of Fire Station 2 would directly interfere with Long Lake’s ability to perform under the contract, which due to the nature of the services provided, could have life threatening consequences. *Id.*

On May 17, 2023, counsel for Long Lake again sent Orono Mayor Dennis Walsh and Orono City Council a letter in connection with Orono’s Fire Needs Assessment reflecting further breaches of the Contract for Fire Protection and Orono’s clear anticipatory breach. Yetka Decl.

¶ 4, Ex. C. Nevertheless, it appears that Orono has chosen to ignore Long Lake's attempts to resolve this dispute without court involvement, and intends to move forward with its plan.

As such, on June 12, 2023, the Orono City Council unilaterally adopted Resolution 7374, providing that Orono will assume responsibility for the Navarre Fire Service Area beginning no later than July 1, 2024, and, in direct violation of the Contract for Fire Protection that is currently in effect, Orono committed to assume responsibility for the operation and maintenance of Fire Station 2 no later than July 1, 2024, despite Long Lake's obligation to maintain control of the Fire Stations and provide fire protections services until January 1, 2026. Miner Decl. ¶ 34. It is without question that Orono's concerted efforts to disrupt Long Lake's ability to provide fire protection and emergency services poses an unquantifiable risk to public safety. Miner Decl. ¶ 35.

ARGUMENT

The present situation is ripe for a preliminary injunction that preserves the status quo of permitting Long Lake to maintain its firefighting force and control of the Fire Stations consistent with the terms of the Contract for Fire Protection with Orono and Medina, the Fire Protection Contract with Minnetonka Beach, and the Contract for Joint Ownership. If injunctive relief is not granted, Orono's ongoing breaches of contract will cause irreparable damage to not just Long Lake, but possibly to the cities of Medina and Minnetonka Beach, as well as thousands of residents who rely on Long Lake to provide fire protection and emergency services. The sheer, unfathomable potential for harm caused by Orono's actions is evident in the emergency nature of services provided by the Long Lake Fire Department. For these reasons, and the others stated herein, Long Lake requests the Court issue a preliminary injunction prohibiting Orono's continued violations of the Contract for Fire Protection.

RELIEF SOUGHT

Long Lake requests a preliminary injunction, ordering that through December 31, 2025, the City of Orono and its agents be: (1) prohibited from directly soliciting employment of, or otherwise interfering with, the work of the LLFD firefighters; and (2) prohibited from using, or hindering Long Lake's use of, Fire Station 1 and 2.

I. INJUNCTIVE RELIEF IS NECESSARY TO ENFORCE LONG LAKE AND ORONO'S CONTRACTUAL OBLIGATIONS AND TO PREVENT IRREPARABLE HARM TO THE CITIES OF LONG LAKE, ORONO, MEDINA, AND MINNETONKA BEACH.

A district court has broad discretion to grant temporary injunctive relief upon a showing of facts by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result without such relief. Minn. R. Civ. P. 65.02. The primary consideration in determining whether to grant injunctive relief is the need to maintain the status quo so that the rights of the parties will not be impaired during the course of the litigation. *See Pickering v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 564 (Minn. 1975). Accordingly, injunctive relief is required where a defendant's ongoing misconduct would cause irreparable injury to the plaintiff during the litigation or where a defendant is doing, or threatening to do, some act in clear violation of a plaintiff's rights that would make any ultimate judgment in favor of the plaintiff ineffectual. *See Cramond v. AFL-CIO*, 126 N.W.2d 252, 256 (Minn. 1964).

In deciding whether to grant injunctive relief under Rule 65, Minnesota courts consider the following factors:

1. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
2. The harm to be suffered by [the moving party] if the [injunction] is denied as compared to that inflicted on the [nonmoving party] if the injunction issues pending trial;
3. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable

relief;

4. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and

5. The administrative burdens involved in judicial supervision in enforcement of the temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321–22 (Minn. 1965). It is not necessary that the Court determine that *every* factor weighs in favor of granting a temporary injunction, but merely that the factors taken as a whole support such a finding. *See, e.g., Strangis v. Metropolitan Bank*, 385 N.W.2d 47, 48 (Minn. App. 1986) (affirming temporary injunction where “the trial court found four of the factors to be inconclusive” but “factor two was dispositive”).

Injunctive relief is warranted under the *Dahlberg* factors. The requested relief is appropriate because it is necessary to stop the immediate and irreparable damage caused by Orono’s concerted and blatant violations of the Contract for Fire Protection. The result of any further breach of the Contract for Fire Protection would essentially gut the LLFD, as it will be unable to meet its contractual obligations to manage the operations and maintenance of the Fire Stations, furnish firefighting services, rescue/medical rescue services, and related fire protection services to the Contracting Cities, and furnish sufficient staff to each fire and emergency call in order to safely and effectively provide all necessary services. Immediate injunctive relief, enforcing the entirety of Orono’s obligations under the Contract for Fire Protection, is required to avoid irreparable harm to not just Long Lake, but the cities of Orono, Medina, and Minnetonka Beach, and all of the residents and property owners in the Fire Protection Service Area who depend upon the LLFD for live-saving protection and emergency medical services.

II. THE RELATIONSHIP BETWEEN LONG LAKE AND ORONO STRONGLY FAVORS INJUNCTIVE RELIEF.

The nature of the relationship between the parties is relevant to temporary injunctive relief because it affects the parties' reasonable expectations, *Dahlberg Bros, Inc.*, 137 N.W.2d at 322, and because the purpose of injunctive relief is to preserve the status quo. *Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. App. 1994). Relationships that support temporary injunctive relief are longstanding or formalized in some way. *See Dahlberg*, 137 N.W.2d at 322 (40-year relationship). Existing contractual relationships support the issuance of a temporary injunction. *See, e.g., Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 221 (Minn. App. 2002).

Here, the relationship between the parties strongly weighs in favor of injunctive relief. Long Lake and Orono are neighboring cities and have been parties to the Contract for Fire Protection for over two decades. Since 2001, Long Lake has been responsible for overseeing the operation and maintenance of Fire Station 1 (and Fire Station 2 when it was built in 2011).

Before Fire Station 1 was built, the Long Lake Fire Department was located in the City of Long Lake. Since 1915, Long Lake has been responsible for overseeing the operation and maintenance of the Long Lake Fire Department. When Long Lake and Orono entered into a Contract for Joint Ownership in connection with Fire Station 1, Long Lake and Orono agreed that "Long Lake shall have the overall responsibility to oversee the operation and maintenance of the land and building upon which the Long Lake Fire Station is to be relocated." It is clear that the status quo requires Long Lake to maintain control of the Fire Stations.

Long Lake also has contracts to provide fire protection and emergency services to other Contracting Cities, including Medina and Minnetonka Beach. Minnetonka Beach agreed, in part, to contract with Long Lake for fire protection services because Fire Station 2 is located right next

to Minnetonka Beach. Orono's plan to "assume control" of Fire Station 2, prior to the expiration of the Contract for Fire Protection, will hinder Long Lake's ability to effectively services Minnetonka Beach as contemplated in the contract. In fact, Orono has publicly stated that in addition to assuming control of Fire Station 2, it intends to solicit Minnetonka Beach to contract with Orono's new fire department. While Orono has a right to fairly compete with Long Lake for contracting cities after the expiration of the Contract for Fire Protection, it has no reasonable expectation of being able to commit an unsanctioned "take over" of Fire Station 2 and use the location to solicit contracting cities away from Long Lake prior to the expiration of the existing contracts.

In sum, this factor therefore weighs in favor of granting injunctive relief.

III. THE BALANCING OF HARMS ALSO STRONGLY FAVORS INJUNCTIVE RELIEF.

The second *Dahlberg* factor requires the Court to consider "the harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if an injunction issues...." *Dahlberg Bros., Inc.*, 137 N.W.2d at 321. Courts have also noted that "[r]eal property is unique, which money damages may not adequately compensate When legal remedies are inadequate, injunction may be granted." *Strangis v. Metro. Bank*, 385 N.W.2d 47, 48–49 (Minn. App. 1986). Entry of injunctive relief is appropriate and necessary in this case because Long Lake will suffer irreparable harm without a temporary restraining order or preliminary injunction.

A. Long Lake Fire Department Will Suffer Irreparable Harm if Orono is not Enjoined from Taking Control of the Fire Stations and Soliciting Long Lake's Firefighters.

Irreparable harm is a principal consideration in determining whether to grant injunctive relief. The party seeking the injunctive relief must show that there is no adequate remedy at law

and that an injunction is necessary to prevent irreparable injury. *See Cherne Indus. v. Grounds & Assoc.*, 278 N.W.2d 81, 92 (Minn.1979). If Orono succeeds in taking control of one or both of the Fire Stations, Long Lake will be limited in the type and quality of fire protection and emergency medical services it is able to provide to the Contracting Cities and its residents.

There can be no legitimate dispute as to the importance of the fire protection and emergency services provided by the LLFD. If Long Lake waits until Orono has physically invaded the Fire Stations and has recruited all of Long Lake's highly trained firefighters, Long Lake will be unable to provide the same level and quality of fire protection services, if any at all, to the remaining Contracting Cities. If that is the case, irreparable harm will certainly result, as thousands of people that depend on LLFD's life-saving, property-protecting services. Once life and property are lost, monetary damages provide woefully insufficient relief. Absent immediate injunctive relief, Long Lake, and potentially thousands of people in the Fire Service Area may experience irreparable harm that cannot be remedied through a damages award after a trial a year or more from now. Therefore, the "harm" factor weighs heavily in favor of granting injunctive relief.

B. Orono will not Suffer Harm from a Preliminary Injunction.

In contrast, the harm to Orono if a preliminary injunction is granted is non-existent. Injunctive relief will only prohibit Orono from engaging in conduct that violates the agreed upon Contract for Fire Protection until January 1, 2026. Specifically, this will prohibit Orono from taking control of the Fire Stations and recruiting LLFD firefighters while Long Lake provides fire protection services to other Contracting Cities for the remainder of the term.

Orono will not be unable to demonstrate any harm if injunctive relief is granted because Orono does not have a functioning fire department, nor does Orono currently provide fire protection or emergency services to anyone, including its own City. While it is clear that Orono

is attempting to build a brand-new fire department, it is unnecessary and duplicative for Orono to do so while the Contract for Fire Protection is in effect. Furthermore, Orono can continue to obtain any needed fire services from the LLFD. Because Orono will not suffer any cognizable harm from a preliminary injunction, and because Long Lake will suffer significant harm if the Court does not issue immediate injunctive relief, the balance of harms weighs in favor of granting injunctive relief.

IV. LONG LAKE IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS.

Injunctive relief is appropriate where the moving party establishes a reasonable likelihood of success on the merits. *Chalfen v. Med. Inv. Corp.*, 210 N.W.2d 216, 219 (Minn. 1973). “[I]f a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits.” *Metro. Sports* 638 N.W.2d at 226; *see also Dahlberg*, 137 N.W.2d at 321 n.13 (upholding a temporary injunction despite finding that plaintiff may have serious obstacles to overcome before establishing its right to what in effect amounts to specific performance of the franchise agreement). Likelihood of success on the merits is one of the most important *Dahlberg* factors. *See Minneapolis Fed’n of Teachers v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App. 1994) (stating that probability of success in the underlying action is a “primary factor” in evaluating injunctive relief). “When there is reasonable probability that plaintiff may establish a cause of action, the court may make the recovery effective against the acts of the defendant.” *Janetta v. Janetta*, 285 N.W. 619, 621 (Minn. 1939). Here, Long Lake makes far more than the minimal “doubtful showing” required for injunctive relief.

A. Long Lake is Likely to Succeed on its Contract Claims (Counts I and II).

To succeed on a breach-of-contract claim, a plaintiff must establish that the defendant breached a valid and enforceable contract and that the plaintiff was damaged. *See Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (providing elements of a breach-of-contract claim). It is undisputed that the Contract for Fire Protection is a valid and enforceable contract between Long Lake, Orono, and Medina. The Contract for Fire Protection outlines the obligations and responsibilities of Long Lake in connection with providing fire protection and emergency services to each Contracting City, and for managing and operating the Fire Stations. It similarly outlines the obligations of the Contracting Cities in connection with funding and budgeting for the LLFD.

Orono has breached the contract by systematically working to hinder Long Lake's ability to perform its contractual obligations to provide fire protection services and to manage and control the Fire Stations. Orono also expressly repudiated the contract and its obligations thereunder. For example, Orono purchased a ladder truck out from under Long Lake and while refusing to approve Capital Budgets or shared equipment purchases for the LLFD pursuant to the contract. Orono also hired Long Lake's fire chief, approached legislators to lobby for control of the LLFD pension funds, and began recruiting LLFD firefighters, which if successful will effectively hinder Long Lake's ability to perform fire protection services under its contracts. Orono has also publicly committed to assuming control of at least Fire Station 2 prior to the expiration of the Contract for Fire Protection. By reason of Orono's breaches, separately and together, Long Lake has been and will continue to be damaged by its inability to provide the highest quality life-saving emergency services to its fire service recipients.

Additionally, under Minnesota law, every contract includes an implied covenant of good faith and fair dealing. *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502

(Minn. 1995). This requires that one party does not “unjustifiably hinder” another party’s performance under the contract. *Id.* Good faith performance of the Contract for Fire Protection requires Orono to abide by the parties’ common purpose in executing the contract, namely, allowing Long Lake to furnish all firefighting services, rescue and medical services, and manage the ongoing operation and maintenance of the Fire Stations. Orono violated the implied covenant of good faith and fair dealing by evading the spirit of the contract by purchasing a ladder truck out from under Long Lake and refusing to approve future Capital Budgets or future shared equipment purchases, hiring its fire chief, actively working to obtain control of the LLFD pension funds, recruiting LLFD firefighters, and committing to assume control of Fire Station 2, all of which willfully hinder Long Lake’s ability to perform its contractual obligations.

Given that the elements Long Lake’s contract claims are met, the Court should conclude that Long Lake is likely to succeed on the merits of these claims.

B. Long Lake is Likely to Prevail on the Merits of its Claim for Tortious Interference Claim.

To recover for tortious interference with contract, Long Lake must prove (1) the existence of a contract, (2) Defendant’s knowledge of that contract, (3) the intentional procurement of the breach of that contract, (4) without justification, and (5) damages. *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 362 (Minn. 1998). It is undisputed that Long Lake has entered into the Contract for Fire Protection with Orono and Medina wherein Long Lake agreed to provide fire protection and emergency services to the Fire Service Area designated within each Contracting City. Long Lake also entered into a Fire Service Contract with Minnetonka Beach wherein Long Lake agreed to provide fire protection and emergency services to the Fire Service Area designated within Minnetonka Beach. Long Lake also has employment relationships with each of its firefighters, who have agreed to provide fire protection and emergency services

through the LLFD. Orono has knowledge of each one of these contracts due to its role and involvement with the Contract for Fire Protection and the LLFD.

Orono intentionally has procured breach of the Contract for Fire Protection by attempting to hinder Long Lake's ability to perform its contractual obligations to the city of Medina and by repudiating its obligations under the contract. Orono further seeks to procure breach of the Fire Service Contract by hindering Long Lake's ability to perform services pursuant to its contract with Minnetonka Beach and by soliciting and influencing Minnetonka Beach to contract with the Orono Fire Department instead of the LLFD. Orono is also publicly soliciting and influencing LLFD firefighters to leave LLFD and work for the Orono Fire Department. Accordingly, Long Lake has a significant likelihood of success on the merits of its tortious interference with contract claim against Orono.

V. PUBLIC POLICY CONSIDERATIONS STRONGLY FAVOR GRANTING INJUNCTIVE RELIEF.

The public policy prong of the *Dahlberg* factors also supports issuance of a preliminary injunction. In considering whether to grant injunctive relief, the Court must also consider "the aspects of a fact situation, if any, which permit or require consideration of public policy expressed by statutes, state and federal." *Dahlberg Bros., Inc.*, 137 N.W.2d at 321–22. Indeed, there is no public interest served by allowing Orono to violate its obligations under Contract for Fire Protection and hinder LLFD's ability to provide fire protection and emergency services to its Contracting Cities.

Moreover, the public interest is better served by the consolidation of fire services, similar to the structure of Long Lake's contracts with Orono, Medina, and Minnetonka Beach. This structure brings communities together under one fire service provider to provide high-quality fire protection and emergency services, and reduces redundancy in service and costs associated with

creating separate fire departments for each city. This structure has served nearby cities such as Excelsior, Deephaven, Greenwood, Shorewood, and Tonka Bay well for the last twenty years. Accordingly, this factor favors the issuance of injunctive relief.

VI. THE COURT’S ADMINISTRATIVE BURDEN WILL BE MINIMAL.

The final factor considered by the Court is “the administrative burdens involved in judicial supervision and enforcement of the temporary decree.” *Dahlberg Bros., Inc.*, 137 N.W.2d at 322. Here, the administrative burden and the supervision if injunctive relief is granted will be minimal or non-existent. If a preliminary injunction is granted, Orono will simply need to cease its efforts which directly or indirectly hinder Long Lake’s ability to perform its contractual obligations in providing fire protection services to its Contracting Cities, and Orono must abide by the terms of the Contract for Fire Protection. These prohibitions are clearly articulated and lend themselves to easy enforcement. The Court would not be required to act other than to enforce the injunctive relief if Orono fails to comply with the Order. Any perceived burdens can be resolved by drafting appropriate modifications to the proposed injunctive order. Thus, this Court should issue the proposed Order.

VII. NO BOND IS NECESSARY

The purpose of a bond is to require the party seeking the order to pay for any harm caused by the erroneous grant of a temporary restraining order. *Hubbard Broad., Inc. v. Loescher*, 291 N.W.2d 216, 220 n.2 (Minn. 1980). However, a trial court has wide discretion in setting the amount of a bond and may waive the bond requirement entirely. *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 296–97 (Minn. App. 1995); *Paradata of Minn., Inc. v. Fox*, 356 N.W.2d 852, 855 (Minn. App. 1984). As discussed above, there will be no cognizable harm to Orono if the temporary restraining order is granted. Rather, issuance of a temporary restraining order would simply maintain the status quo by prohibiting its unlawful actions. Accordingly, the Court

should exercise its discretion and not require the posting of a bond of other security as a condition of issuing injunctive relief.

CONCLUSION

Long Lake needs an injunction to stop Orono's unlawful behavior and the resulting irreparable harm. Orono has clearly breached the Contract for Fire Protection by expressly repudiating the terms and by hindering Long Lake from its ability to fully perform its contractual obligations, including providing the same high level of fire protection and emergency services it has provided to the Contracting Cities for the last twenty years. The harm from Orono systematically dismantling the LLFD is significant, irreparable, and may ultimately be difficult to quantify. Thus, Long Lake needs the harm to stop now, before there is ensuing loss of life and or property as a result of Orono's actions. Long Lake therefore respectfully requests that the Court grant its Motion for Preliminary Injunction and enter Long Lake's proposed Order. Respectfully,

LARKIN HOFFMAN DALY & LINDGREN, LTD.

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